

**BEFORE THE  
EMPLOYMENT APPEAL BOARD  
Lucas State Office Building  
Fourth floor  
Des Moines, Iowa 50319**

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**KRISTY L MCCARTY**

Claimant,

and

**IOWA WORKFORCE**

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**HEARING NUMBER: 11B-EUCU-01114**

**EMPLOYMENT APPEAL BOARD  
DECISION**

**N O T I C E**

**THIS DECISION BECOMES FINAL** unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT** IS FILED WITHIN **30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

**SECTION: 96.3-7**

**D E C I S I O N**

The Claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The majority of the Appeal Board finds it cannot affirm the administrative law judge's decision. The majority of the Employment Appeal Board **REVERSES** as set forth below.

**FINDINGS OF FACT:**

A representative issued a decision dated October 22, 2010, that concluded the Claimant was denied benefits. The Claimant appealed that decision and in appeal 10A-UI-01113 the Administrative Law Judge affirmed. The Administrative Law Judge issued a separate decision in case 10A-EUCU-01114, finding an overpayment of \$8,946. The Claimant timely appealed the Administrative Law Judge's denial of benefits and in a concurrently issued decision in case 10A-UI-01113, the Board today reverses the Administrative Law Judge's denial of benefits. The Board now in this decision reverses the overpayment decision.

## REASONING AND CONCLUSIONS OF LAW:

Iowa Code Section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment. If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The Board concludes that the Claimant has not been overpaid unemployment insurance benefits in the amount of \$8946 pursuant to Iowa Code section 96.3-7 as the decision denying benefits that created the overpayment decision has now been reversed.

## DECISION:

The administrative law judge's decision dated January 10, 2011 is **REVERSED**. The Employment Appeal Board concludes that the claimant was not overpaid benefits. A new overpayment may be imposed if the decision on the merits, which has been remanded today, results in a finding against the Claimant.

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John A. Peno

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Monique F. Kuester

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Elizabeth L. Seiser

RRA/fnv